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No. 88-1939

In The

Supreme Court of the United States

October Term, 1988

NEW ENGLAND NEWSPAPERS, INC. d/b/a
THE PAWTUCKET EVENING TIMES,

Petitioner,

v.

PAUL J. M. HEALEY, M.D.,

Respondent.

**On Petition For A Writ Of Certiorari
To The Supreme Court Of Rhode Island**

RESPONDENT, PAUL J. M. HEALEY, M.D.'S, BRIEF IN OPPOSITION

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RESPONDENT'S BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF RHODE ISLAND

The respondent, Paul J. M. Healey, M.D., respectfully prays that the petitioner's request for a Writ of Certiorari to issue, to review the judgment of the Supreme Court of Rhode Island entered in this proceeding on March 3, 1989, be denied.

OPINIONS BELOW

Attached hereto as a part of the Appendix, is the Supreme Court of Rhode Island's decision in the first of two appeals to that court regarding the instant matter. The Supreme Court Decision is reported at 520 A.2d 147 and is reprinted in the Appendix hereto at 1a – 14a.

The opinion of the Supreme Court of Rhode Island in the second appeal is reported at 555 A.2d 321 and is reprinted in the Appendix attached hereto and found at 15a – 30a.

The Rhode Island Supreme Court's decision in the instant matter, denying the petitioner's motion for said court to reconsider its original denial of said petitioner's motion to stay the effect of it's March 3, 1989 decision is reprinted in the Appendix attached hereto and can be found at 31a – 32a.

JURISDICTION

The judgment of the Supreme Court of Rhode Island was entered on March 3, 1989. The petitioner has filed the instant petition for a Writ of Certiorari within 90 days of that date. The jurisdiction of this Court is sought pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

The petitioner alleges that the First Amendment of the United States Constitution which reads in part:

> Congress shall make no law . . . abridging the freedom of speech, or of the press . . .

And the Fourteenth Amendment, Section 1, United States Constitution which reads in pertinent part:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law . . .

are in issue in this petition.

STATEMENT OF THE CASE

A. Preliminary Statement

The respondent, Dr. Paul J. M. Healey, obtained a jury verdict in the amount of $28,600.00 in compensatory damages and $250,000.00 in punitive damages in this defamation action against the petitioner, New England Newspapers, Inc., d/b/a The Evening Times. The jury

determined that a June 25, 1980 article defamed the plaintiff. Subsequent to this jury verdict, the petitioner appealed to the Rhode Island Supreme Court and the Court affirmed the verdict, finding that the respondent was a private figure and that there was the requisite degree of evidence to entitle him to both compensatory and punitive damages.

B. Statement of Facts

The petitioner's brief outlines the factual background leading to the YMCA meeting at MacColl Field in Lincoln, Rhode Island. The evidence at trial revealed that the following events occurred subsequent to Mr. Gerald Lampinski's collapse at the entrance of said field, some 400 yards from where the meeting, at which the respondent was present, was being held. (R. 22, 23, 250)

Mr. Frank Smith, while at the meeting, was given the following message to convey to Mr. Robert Bendl, President of the YMCA: Jerry Lampinski had collapsed, that an ambulance had been called, that Lampinski was being attended to and that everything was under control. Thereafter, Mr. Smith crouched between Dr. Healey and Mr. Bendl and related the aforesaid message to them. (R. 228, 229)

The respondent testified at trial that Mr. Smith informed him that Mr. Lampinski had collapsed. Upon hearing this information, Dr. Healey inquired of Mr. Smith if he, the doctor, could be of any help. (R. 34)

On June 25, 1980, immediately prior to the publication of the subject article in the *Evening Times*, John Lampinski, son of the decedent, Gerald Lampinski, went to the office of the *Evening Times*. He spoke to the reporter, Edward Gaulin. Mr. Gaulin did not tell John Lampinski or his brother, Jeff, that the reporter was an eyewitness to their father's collapse. The reporter did not tell the Lampinski boys that only 5 to 10 minutes elapsed between the moment of their father's collapse and the time that the rescue squad arrived. Mr. Gaulin did not advise the Lampinskis that cardiopulmonary resuscitation was administered to their stricken father within a matter of a minute of his collapse. (R. 377, 378)

REASONS FOR DENYING THE WRIT

I. The Court Below Embraced A Constitutionally Sound Standard For Identifying Defamatory Opinions Based On Disclosed Defamatory Facts

The legal question presented is whether the republication by the petitioner, *Evening Times*, of criticism voiced by Mr. John Lampinski concerning the respondent, Dr. Paul J. M. Healey, is as a matter of law, defamatory. Rhode Island law incorporates the concept of falsity within its definition of defamatory statement. *Lyons v. Rhode Island Public Employees Council 94*, 516 A.2d 1339, 1342 (R.I. 1986).

The United States Supreme Court in *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 339, 340, 94 S.Ct. 2997, 3007, 41 L.Ed.2d 789 (1974), acknowledged that:

> Under the First Amendment, there is no such thing as a false idea. However pernicious an opinion may seem, we depend for its correction not on the conscience of judges and juries, but on the competition of other ideas. But there is no Constitutional value in false statements of fact.

Defamatory communication may consist of a statement in the form of an opinion, but a statement of this nature is actionable only if it implies the allegation of undisclosed defamatory facts as the basis for the opinion. *Restatement (Second) of Torts* §566 (1977).

The Sixth Circuit Court in *Orr v. Argus-Press Co.*, 586 F.2d 1108 (1978) cert. denied 440 U.S. 960, 99 S.Ct. 1502, 59 L.Ed.2d 773 (1979), opined that:

> Based on *Gertz* and other Supreme Court opinions, the American Law Institute, in its recent revision on chapters of libel in the *Restatement of Torts*, adopted the following statement of the *Gertz* principle.

Orr, supra, 1114.

The Sixth Circuit Court was referring to the aforesaid *Restatement of Torts* section.

The Superior Court in Pennsylvania, reversed a motion for summary judgment obtained by a defendant in a defamation case and remanded the case to the lower court for trial. In so doing, the Court wrote concerning the defendant's alleged defamatory statements:

> Remarks concerning Judge Braig could reasonably be interpreted as a simple statement of fact, e.g., 'Judge Braig is no friend of the police brutality unit'. However, at least his remarks constitute a 'mixed' expression of opinion made on the basis . . . 'of undisclosed facts about the plaintiff that must be defamatory in character in order to justify the opinion'.

Braig v. Field Communications, 310 Pa.Super 569, 456 A.2d 1366, 1373 (1983), cert. denied 466 U.S. 970, 104 S.Ct. 2341, 80 L.Ed.2d 816 (1984).

The Rhode Island Supreme Court first adopted Section 566 of the aforesaid *Restatement of Torts* in *Hawkins v. Oden*, 459 A.2d 481 (R.I. 1983). The Court affirmed a directed verdict granted by the trial justice on behalf of the defendant. The Supreme Court held the defendant talk show host's language that the plaintiff was "reaching into the public till with both hands" and "stealing public money", was protected opinion on the basis that all of the facts resulting in the defendant's opinion had been fully disclosed to the listening audience.

This case was originally tried in 1984. The defendant/petitioner's motion for a directed verdict was granted, and the plaintiff/respondent appealed to the Rhode Island Supreme Court. The Supreme Court in *Healey v. New England Newspapers, Inc., d/b/a The Pawtucket Evening Times*, 520 A.2d 147 (1987) reversed the trial justice's decision and remanded the case to the Superior Court for a new trial. The Court wrote in adhering to its analysis of separating opinion from fact, by implementation of the *Restatement of Torts* standard cited above:

> . . . The record contains evidence that facts surrounding the June 23, 1980 board meeting and the collapse of Gerald Lampinski existed which were not fully disclosed by the reporter in question. Lampinski did not collapse at the board meeting; no request was made to Dr. Healey to render aid to Lampinski; Dr. Healey, nevertheless, offered to help Lampinski and was told that such help was not necessary.

Healey, supra, 152, 153.

All of the facts cited in *Healey* 1, were introduced into evidence at the second Healey trial. (R. 228, 229, 230, 231, 34) Additionally, at the second trial, the evidence was conclusive that the petitioner's reporter, Mr. Edward Gaulin, observed Mr. Lampinski collapse, administered cardiopulmonary resuscitation to him, and that Mr. Lampinski was removed from the scene, 5 to 10 minutes after he collapsed by means of a rescue vehicle. (R. 250, 251)

Notwithstanding all of the personal knowledge that the petitioner's reporter had concerning Mr. Lampinski's collapse, the petitioner republished stinging accusations regarding the respondent's status as a physician, that were initially made by the decedent's son. It is undisputed that John Lampinski, the son of the decedent, was not at the field on the day that his father collapsed and had no personal knowledge concerning said collapse or the events that occurred immediately thereafter.

The fact that the reporter, Edward Gaulin, did not convey all of the information that he had concerning Gerald Lampinski's collapse to the decedent's sons, caused much of the anger that the decedent's children obviously felt. Compounding the problem, the reporter then chose to quote John Lampinski in the subject article as criticizing Dr. Healey for not responding to his father, when said reporter knew that the criticism was unfounded.

II. The Decision Below Properly Applied The "Actual Malice" Standard In This Case

The Court in *Gertz*, supra, 349, made it abundantly clear that a private figure plaintiff needed to establish by

clear and convincing evidence, that the publisher acted with "acutal malice", thereby entitling said private figure to the jury's consideration of punitive damages. *Gertz*, supra, 349.

On June 12, 1989, the Rhode Island Supreme Court denied the instant petitioner's motion for reconsideration of said Court's refusal to grant a stay, or, in the alternative, to explain the basis for said refusal. In that decision, appended hereto, the Court stated:

> . . . The reporter in this case went beyond the conduct necessary to create such liability because he published the matter in the guise of an opinion based upon fact he knew to be untrue, thus supplying the element of actual malice necessary to support an award of punitive damages.

From a review of the foregoing facts, it is abundantly clear that this is precisely what the petitioner's reporter did, when writing the June 25, 1980 article.

CONCLUSION

For the foregoing reasons, the respondent, Paul J. M. Healey, M.D., respectfully requests that this Honorable Court deny New England Newspapers, Inc., d/b/a The Pawtucket Evening Times', petition for a Writ of Certiorari.

Respectfully submitted,

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APPENDIX

Paul J. M. HEALEY, M.D.

v.

NEW ENGLAND NEWSPAPERS, INC.
d/b/a The Pawtucket Evening Times.

No. 84-351-Appeal.

Supreme Court of Rhode Island.

Feb. 2, 1987.

Physician brought libel action against newspaper for articles reporting opinions critical of physician's failure to aid collapsed individual. The Superior Court, Providence County, Lagueux, J., directed verdict in favor of newspaper. Physician appealed. The Supreme Court, Shea, J., held that opinions contained in newspaper articles could reasonably by understood to imply assertion of undisclosed, but false and defamatory, facts justifying opinions, were capable of defamatory meaning, and therefore, created jury question whether newspaper libeled physician.

Vacated and remanded.

Joseph A. Kelly, Carroll Kelly & Murphy, John R. Mahoney, Baluch Mahoney & Gianfrancesco, Providence, for plaintiff.

Michael Horan, Pawtucket, for defendant.

OPINION

SHEA, Justice.

This matter is before the court on the plaintiff's appeal from a directed verdict entered for the defendants. The Superior Court lawsuit for defamation arose out of

two newspaper articles published by the defendant the Pawtucket Evening Times (hereinafter The Times) on June 24 and June 25, 1980, regarding the actions of the plaintiff, Dr. Paul J.M. Healey. At the close of the evidence the defendant moved for a directed verdict. The trial justice granted the motion. We reverse.

The alleged libelous publications arose from the following facts. In early June 1980 two employees of the Pawtucket-Central Falls YMCA (YMCA), Beverly Tillier and James Greene, resigned upon request by the YMCA personnel committee. A controversy among other YMCA employees developed over the discharge of Tillier and Greene. The plaintiff was president of the YMCA at this time but played no role in the discharge of these employees.

On June 23, 1980, at approximately 6 p.m., the YMCA board of directors held its monthly meeting in the physical fitness center, a structure in the YMCA complex located approximately 350 to 400 yards from the entrance to MacColl Field in Pawtucket. There was concern that a possible disturbance might take place at MacColl Field owing to the terminations of Tillier and Greene, and as a result security was hired for the meeting.

After a roll call was taken of the directors, Dr. Healey asked all who were not members of the board to excuse themselves and leave the room. At that time Gerald Lampinski, who had been active in the Darlington Plains Outpost (an affiliate of the Pawtucket YMCA), informed Dr. Healey that he was in attendance at the meeting to represent the interests of an absent member, a Mr. Sousa. Doctor Healey told Lampinski that under the rules of the

meeting Lampinski would have to leave. Lampinski entered his objections and left the meeting.

Doctor Healey testified that approximately one-half hour after the meeting had begun, Frank Smith, a staff member and executive director of the Westwood Branch of the Pawtucket YMCA, approached Dr. Healey and Robert Bendl, the general executive director of the Pawtucket YMCA, and told them that Lampinski had collapsed outside at the front of the property. Doctor Healey asked Smith if he could be of any help, and according to Dr. Healey, Smith said that Dr. Healey's help was not needed because Lampinski was being attended to by two people using CPR, that a rescue vehicle was either on the scene or immediately expected on the scene, and that Lampinski was in the process of being transported to the hospital. Smith claimed that he had been advised of these events by Esselton McNulty, the executive director of the family branch of the Pawtucket YMCA, who had left the board meeting after the security guard stationed at the complex advised him of Lampinski's collapse. McNulty testified that after leaving the board meeting, he was informed by Raymond Bergeron, a YMCA member who had been picketing at MacColl Field, that Lampinski had collapsed, that he was being attended by a medic, and that an ambulance had been called. The board meeting continued while the conversation between Smith, Bendl and Healey took place. After the exchange among these three individuals concluded, Dr. Healey continued to preside over the meeting.

At approximately 10 p.m. on June 23, 1980, Dr. Healey contacted the coronary care unit of the hospital to

which Lampinski had been transported. Doctor Healey learned that Lampinski had died.

On June 23, 1980, Edward Gaulin, a reporter for the Times, was present at MacColl Field and saw Lampinski collapse at approximately 6:15 p.m. Gaulin and two unidentified males then administered CPR to Lampinski. Approximately five to ten minutes elapsed between the time Lampinski collapsed and the time the emergency vehicle arrived at the scene.

At MacColl Field on the evening in question, Gaulin talked to Bergeron, who complained that no one had come out of the board meeting to assist Lampinski.

On June 24, 1980, defendant published an article by reporter Gaulin about the previous evening's events. The first edition of the paper was published without any reference to criticism of Dr. Healey. However, the fourth edition of the article reported that Bergeron, a friend and supporter of Lampinski, was critical of plaintiff, a surgeon, for his failure to respond to Lampinski's collapse. On June 25, 1980, defendant published another article stating that members of Lampinski's family, after reading the fourth edition of the article of June 24, were angry because they felt Lampinski should have been given early attention by either a doctor or a paramedic at the board meeting.

Lampinski's sons, John and Jeffrey Lampinski, testified that after they had received several calls from friends and relatives outraged over the doctor's apparent lack of response to Lampinski's collapse, they contacted a few other persons who had witnessed the incident. After hearing different versions of the events surrounding their

father's death, they went to Gaulin's office in an attempt to learn the truth.

As a result of that conversation, Gaulin wrote another article, published on June 25, 1980, reporting the sons' criticism of plaintiff for his failure to aid their father. Both sons stated that the June 25 article was a fair statement of the views expressed during their meeting with Gaulin.

At the close of evidence defendant moved for a directed verdict, and the trial justice granted the motion, stating that Bergeron and Lampinski's sons had a right to voice their opinions and that defendant had a right to report them. The trial justice declared that a libelous publication must contain a false statement of fact that is defamatory. The trial justice held that neither article contained a false statement of fact. He also declared that opinions reported accurately are not actionable.

This court performs the same function as the trial justice in reviewing a motion for a directed verdict. The evidence is viewed in the light most favorable to the nonmoving party, without weighing the evidence or assessing the credibility of witnesses, and only those inferences that support the nonmoving party's claim are drawn. If issues exist upon which reasonable persons might reach different conclusions, the motion should be denied. *Major v. Drapeau*, 507 A.2d 938, 940 (R.I.1986).

We begin our analysis by noting that an action in defamation requires proof of " '(a) a false and defamatory statement concerning another; (b) an unprivileged publication to a third party; (c) fault amounting at least to negligence on the part of the publisher;' and (d) damages,

unless the statement is actionable irrespective of special harm." *Lyons v. Rhode Island Public Employees Council 94*, 516 A.2d 1339, 1342 (R.I.1986) (quoting 3 Restatement (Second) *Torts* § 558 (1977)). Furthermore, "Rhode Island law incorporates the concept of falsity into its definition of a defamatory statement."[1] 516 A.2d at 1342. As this court has stated:

> "[A]ny words, if false and malicious, imputing conduct which injuriously affects a man's reputation, or which tends to degrade him in society or bring him into public hatred and contempt, are in their nature *defamatory* * * *." *Elias v. Youngken*, 493 A.2d 158, 161 (R.I.1985) (quoting *Reid v. Providence Journal Co.*, 20 R.I. 120, 124-25, 37 A. 637, 638 (1897)).

This court has also stated that "[t]he question of whether or not the meaning of a particular communication is defamatory, is one of law for the court." *Gordon v. St. Joseph's Hospital*, 496 A.2d 132, 136 (R.I.1985) (quoting *Elias v. Youngken*, 493 A.2d 158, 161 (R.I.1985)). However, whereas the threshold determination of whether a statement is capable of bearing a defamatory meaning is for the court to decide, the ultimate conclusion on whether such a meaning was indeed conveyed is for the jury to decide. *Cianci v. New Times Publishing Co.*, 639 F.2d 54, 60 (2d Cir.1980); 3 Restatement (Second) *Torts*, § 614.

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[1] In *Lyons v. Rhode Island Public Employees Council 94*, 516 A.2d 1339, 1342-43 n. 4 (R.I.1986), this court noted that the word "defamatory" at times is used to include the element of falsity and at times refers only to the particular type of language, that is, injurious to reputation and so forth. In the instant case the concept of falsity is incorporated into our definition of a defamatory statement.

In an often-quoted dictum from *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 339-40, 94 S.Ct. 2997, 3007, 41 L.Ed.2d 789, 805 (1974), the Supreme Court stated:

> "Under the First Amendment there is no such thing as a false idea. However pernicious an opinion may seem, we depend for its correction not on the conscience of judges and juries but on the competition of other ideas."

Relying in part on *Gertz*, the American Law Institute adopted the view of the 3 Restatement (Second) *Torts* § 566 at 170 that "a statement in the form of an opinion * * * is actionable only if it implies the allegation of undisclosed defamatory facts as the basis for the opinion." This formulation was quoted with approval in *Belliveau v. Rerick*, 504 A.2d 1360, 1362 (R.I.1986), and in *Hawkins v. Oden*, 459 A.2d 481, 484 (R.I.1983). In *Hawkins* this court quoted the language of the Restatement as follows:

> " 'It is the function of the court to determine whether an expression of opinion is capable of bearing a defamatory meaning because it may reasonably be understood to imply the assertion of undisclosed facts that justify the expressed opinion about the plaintiff or his conduct * * *.' " *Id.* at 484.

Comment c to § 566 of the Restatement explains that a plaintiff may recover in a defamation action if the expressed opinion is based on undisclosed or assumed defamatory facts of which the listener is unaware. As stated by the Supreme Court of Colorado, "The opinion must appear reasonably to the listener to be based on defamatory facts which the reporter has not disclosed to the audience but which the audience can reasonably expect to exist." *Burns v. McGraw-Hill Broadcasting Co.*, 659 P.2d 1351, 1358 (Colo.1983) (opinions which imply the

existence of an undisclosed factual predicate may support a cause of action in defamation); *see also Ollman v. Evans*, 479 F.Supp. 292, 293-94 (D.D.C. 1979) (under *Gertz* and its progeny, no cause of action arises unless defendant's opinions imply underlying false and defamatory statements of facts, implications that are not apparent here), *rev'd per curiam*, 713 F.2d 838, 851 (D.C.Cir.1983) (columnists' assessment of what political science profession thinks of plaintiff "implies the existence of facts inducing that conclusion * * * [with] little * * * factual predicate in the column in suit") (Robinson, C.J. concurring), *aff'd*, 750 F.2d 970, 985 n. 29 (D.C.Cir.1984) (given the court's own four-factor analysis about whether a statement is a fact or an opinion, a separate § 566 inquiry is not required), *cert. denied*, 471 U.S. 1127, 105 S.Ct. 2662, 86 L.Ed.2d 278 (1985).

Several jurisdictions have agreed that although an expression of opinion based on revealed facts is not actionable, an expression of opinion based on undisclosed facts may be actionable. *Orr v. Argus-Press Co.*, 586 F.2d 1108, 1115 (6th Cir.1978), *cert. denied*, 440 U.S. 960, 99 S.Ct. 1502, 59 L.Ed.2d 773 (1979) (no basis for a libel suit under § 566 because reporter accurately provided the underlying facts); *Hotchner v. Castillo-Puche*, 551 F.2d 910, 913 (2nd Cir.) ("[o]pinions based on false facts are actionable only against a defendant who had knowledge of the falsity or probable falsity of the underlying facts") *cert. denied*, 434 U.S. 834, 98 S.Ct. 120, 54 L.Ed.2d 95 (1977); *Burns v. McGraw-Hill Broadcasting Co.*, 659 P.2d at 1358, *but see Ollman*, 750 F.2d at 984-85. The American Law Institute explains this point further:

> "A simple expression of opinion based on disclosed or assumed nondefamatory facts is not itself sufficient for an action of defamation, no matter how unjustified and unreasonable the opinion may be or how derogatory it is. But an expression of opinion that is not based on disclosed or assumed facts and therefore implies that there are undisclosed facts on which the opinion is based, is treated differently. The difference lies in the effect upon the recipient of the communication." 3 Restatement (Second) *Torts* § 566, comment c at 173.

Applying these principles to the case before us leads to the conclusion that the trial justice was in error in directing a verdict for defendant.

The unusual twist in the case before us involves an allegation of defamation not against the opinion-givers (for example, Raymond Bergeron and the sons of Gerald Lampinski) but against reporter Edward Gaulin who, plaintiff asserts, had within his knowledge certain facts that he allegedly did not disclose in the two articles at issue. Here plaintiff contends that the readers of the articles in question could reasonably expect certain undisclosed and implied defamatory facts about Dr. Healey to exist. We agree.

With regard to the first article in question, plaintiff claims that the criticism expressed by Bergeron and quoted by Gaulin in the June 24, 1980 publication implied the assertion of undisclosed facts that simply did not exist in this case and were known to the reporter not to exist. These facts are (1) Dr. Healey was requested to aid Lampinski, (2) Dr. Healey refused the request to aid Lampinski, and (3) there was sufficient time for Dr.

Healey to render aid to Lampinski after the doctor learned that Lampinski had been stricken.

Gaulin testified that he had been advised by McNulty prior to going to press that there had been no request for Dr. Healey to leave the meeting to assist Lampinski. Nevertheless, by stating Bergeron's opinion critical of Dr. Healey for having failed to aid Lampinski, Bergeron's opinion suggests the assertion of the undisclosed fact that Dr. Healey had been asked to leave the board meeting for that purpose. Therefore, when the evidence is viewed in the light most favorable to plaintiff, the facts would suggest that Gaulin knew at the time that he published Bergeron's opinion that no such request for aid had been made to Dr. Healey or anyone else at the board meeting. Had Gaulin disclosed these underlying facts, Bergeron's opinion could have been evaluated by the readers of the Times in a more objective light.

Similarly, Bergeron's criticism of Dr. Healey, as published, implied that this physician had refused to volunteer to render assistance to Lampinski. However, when the evidence is viewed in the light most favorable to plaintiff, the facts would suggest that Gaulin knew at the time that he published Bergeron's opinion that Dr. Healey neither was requested nor had refused to aid Lampinski. Indeed, plaintiff's uncontradicted testimony revealed that when Smith informed him that Lampinski had collapsed, plaintiff immediately asked Smith if he could be of any help.

Gaulin did not inform the readers of the Times that he was present at MacColl Field when Lampinski collapsed. Gaulin's presence becomes significant in light of

the assertion of the third undisclosed fact, namely, that there was sufficient time to render aid to Lampinski after he had been stricken. Gaulin acknowledged under oath that approximately five to ten minutes elapsed between the time Lampinski collapsed and the time the emergency vehicle arrived at the scene. Gaulin also knew, prior to the running of the fourth edition of the story on June 24, 1980, that according to Bergeron, the board members were not informed of Lampinski's collapse for at least half an hour, at which point there was little, if any, time to render aid to him.

The defendant maintains that Gaulin understood that Bergeron's statement which was critical of the board referred only to members of the board who did not hear McNulty's first announcement to Dr. Healey and Bendl. However, the record before us seriously calls that conclusion into doubt. When this evidence is viewed in the light most favorable to plaintiff, there is the suggestion of an undisclosed defamatory fact that if plaintiff had been inclined to aid Lampinski, sufficient time existed to do so.

Although Gaulin's article of June 24, 1980, contained the caveat that Bergeron later discovered that the board of directors was not informed of Lampinski's collapse for at least half an hour, John Lampinski's outrage at the apparent callous treatment of his stricken father strongly suggests that this added fact did not settle the question of whether Dr. Healey acted in a callous and wanton manner. Accordingly, we find that Gaulin's article in the fourth edition of the Times on June 24, 1980, is capable of bearing a defamatory meaning because Bergeron's opinion may reasonably be understood to imply the assertion of undisclosed facts that justify the expressed opinion

about Dr. Healey. We also conclude that it is for a jury to decide whether more than enough facts were available to Gaulin at the time that he wrote the article of June 24, 1980, to ensure that a reasonable person could not have construed the existing facts in a manner that reflected negatively on plaintiff.

The plaintiff also asserts that the article written by Gaulin and published on June 25, 1980, suffers from the same deficiencies as the June 24, 1980 article. Here too this court finds that the readers of the article in question could reasonably have expected certain undisclosed and implied defamatory facts about Dr. Healey to exist.

John Lampinski, son of the decedent Gerald Lampinski, was not in attendance at MacColl Field on June 23, 1980. However, the article states that members of the Lampinski family were angry because they felt Lampinski should have been given early attention by either a doctor or a paramedic at the board meeting. In the next sentence, the article states, "Dr. Paul J. Healey is Y President and was at the meeting when Lampinski collapsed."

The plaintiff claims that this sentence suggests that the decedent collapsed at the meeting in the presence of Dr. Healey. If so, this would be a factual error clearly within the reporter's knowledge prior to publication. The trial court found that the author of this article was "guilty of poor English." Moreover, the trial court found that any suggestion that Lampinski actually collapsed in the board meeting was dispelled in the next paragraph as follows:

> "Raymond Bergeron said he was standing near Lampinski when he collapsed and immediately drove from the front parking lot of MacColl Field, where

> Lampinski collapsed, to the board meeting about 200 yards away to get board member, Jack Griffin, a Providence firefighter and a paramedic."

The trial court further found that "Dr. Healey could have issued a statement the following morning setting forth all the facts that were at his disposal and justified his decision not to adjourn the meeting and go tend to Lampinski." We disagree.

Although the article does later explain that Lampinski's collapse occurred about 200 yards from where the board meeting was taking place, the column may be reasonably understood to suggest the assertion of undisclosed facts that justify the expressed opinion about Dr. Healey by Lampinski's sons.

Even though it is true that when determining the meaning of a communication, one must examine all parts of the communication that are ordinarily heard or read with it, 3 Restatement (Second) *Torts* § 563, comment d at 163-64, the record contains evidence that facts surrounding the June 23, 1980 board meeting and the collapse of Gerald Lampinski existed which were not fully disclosed by the reporter in question. Lampinski did not collapse at the board meeting; no request was made to Dr. Healey to render aid to Lampinski; Dr. Healey nevertheless offered to help Lampinski but was told such help was not necessary.

The articles of June 24 and 25, 1980 were written in a manner that suggested that plaintiff had failed to aid a person who was in need of medical attention. References to plaintiff as a doctor, coupled with the criticism

allegedly directed at plaintiff by Bergeron and John Lampinski, left the public to question whether Dr. Healey acted properly on June 23, 1980.

This court affirmed the trial court's granting of the defendant's motion for a directed verdict in *Hawkins v. Oden*, 459 A.2d 481 (R.I.1983), a defamation case in which the parties had no dispute regarding the operative facts. In *Hawkins* we further stated, "Without question the 'facts' upon which the offending statements were based had been fully disclosed." *Id.* at 484. In the case before us, unlike the factual setting of *Hawkins*, there are serious factual disputes between the parties as well as a reasonable question, when the evidence is viewed in the light most favorable to plaintiff, whether the criticism directed at plaintiff in the articles at issue was based on implied undisclosed defamatory facts that in reality did not exist.

We hold therefore, that the trial justice was in error in granting the motion for a directed verdict. Accordingly, the appeal is sustained, the judgment appealed from is vacated, and the case is remanded to the Superior Court for further proceedings.[2]

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[2] The trial justice below did not reach the issue of whether the plaintiff was a public or a private figure because the court found no defamatory statement. Hereafter, therefore, the trial court must determine, prior to sending this case to the jury, the status of plaintiff as a public or a private figure and other relevant matters incidental to this type of claim.

Paul J.M. HEALEY, M.D.

v.

NEW ENGLAND NEWSPAPERS, INC.

d/b/a The Pawtucket Evening Times.

No. 87-489-A.

Supreme Court of Rhode Island.

March 3, 1989.

Physician brought libel action against newspaper for articles reporting opinions critical of physicians' failure to aid collapsed person. The Superior Court, Providence County, Lagueux, J., directed verdict in favor of newspaper. Physician appealed. The Supreme Court, 520 A.2d 147, vacated and remanded. On remand, the Superior Court, Gibney, J., entered judgment on jury verdict in favor of physician. Newspaper appealed. The Supreme Court, Shea, J., held that: (1) physician was private figure; (2) evidence created jury questions whether newspaper knew that defamatory implications about physician were false or whether it acted in reckless disregard of falsity of implications; and (3) evidence supported award of punitive damages.

Affirmed, and papers remanded.

Joseph A. Kelly (Carroll, Kelly & Murphy), John R. Mahoney (Baluch, Murphy & Gianfrancesco), Providence, for plaintiff.

Michael F. Horan, Pawtucket, for defendant.

OPINION

SHEA, Justice.

This matter is before the Supreme Court on the defendant's appeal from a judgment for the plaintiff after a jury trial in the Superior Court. We affirm.

This case was originally tried before a jury in Providence County Superior Court in 1984. At the close of the evidence the trial justice granted defendant's motion for directed verdict. This court sustained plaintiff's appeal, vacated the judgment, and remanded the case to the Superior Court for a new trial. *Healey v. New England Newspapers, Inc.*, 520 A.2d 147 (R.I.1987) (Healey I). At the conclusion of that trial, which resulted in a jury verdict for plaintiff, the trial justice denied defendant's motion for a new trial and also denied defendant's motion for a directed verdict on which decision had been reserved.

The facts of this case are fully stated in *Healey I*, but must be related again for easier understanding of the issues. The lawsuit arose out of several articles published by defendant, the Pawtucket Evening Times (the Times), in June 1980. The events that gave rise to the allegedly libelous articles concerned a controversy that had developed between Pawtucket-Central Falls YMCA (YMCA) employees and board members regarding a personnel-committee decision to terminate two employees. The plaintiff, Paul J. M. Healey, M.D., a Pawtucket, Rhode Island, physician, was president of the YMCA's board of directors at the time. He had no direct involvement with the terminations. On June 23, 1980, the YMCA board of directors held its monthly meeting. Because there was concern about a possible disturbance from protestors

opposed to the two terminations, a security officer was hired to stand just outside the YMCA physical fitness center where the meeting took place. People were in fact picketing at MacColl Field, a YMCA property about 400 yards from the physical fitness center.

After a roll call was taken, Dr. Healey, who conducted the meeting, directed Gerald Lampinski to leave. Lampinski was a YMCA member who claimed to be attending the meeting as a proxy for a board member who was unable to attend. The plaintiff ruled that no arrangements for a proxy had been made and that the meeting was restricted to the board of directors. After voicing his objection Lampinski left the room.

The plaintiff testified that thirty minutes after the meeting began, Frank Smith, executive director at the YMCA Westwood branch, told plaintiff and Robert Bendl, who were seated next to each other, that Lampinski had collapsed at the front of MacColl Field. Bendl was general executive director of the YMCA at the time. The plaintiff testified that he asked if he could be of any help. Smith told him that two people were administering cardiopulmonary resuscitation (CPR) and that an ambulance was either there or on the way. The plaintiff also testified that he called the hospital that evening and learned that Lampinski had died.

Esselton McNulty, executive director of the family branch of the YMCA, testified that he saw the security officer enter the board meeting and attempt to beckon to Jack Griffin, a board member and paramedic. He said that he saw Griffin shake his head no to the officer (which Griffin later denied) so McNulty went to the officer and

was informed that Lampinski had collapsed. McNulty sent Ron Mayer, executive director of the MacColl Field YMCA, to assist Lampinski. McNulty testified that he then left the building and spoke with Ray Bergeron, a YMCA member, who told him that Lampinski had collapsed, that a medic was attending him, and that an ambulance had been called. In response to McNulty's offer Bergeron said that he did not want any help, McNulty added. McNulty then returned to the board meeting where he told Smith to advise Bendl that Lampinski had collapsed, that an ambulance was on the way, and that everything was being taken care of.

Smith testified that McNulty did ask him to tell Bendl that Lampinski had collapsed, he was being attended to, an ambulance had been called, and everything was under control.

Edward Gaulin, a reporter for the Times, was at MacColl Field when Lampinski collapsed. At first Gaulin assisted another person in administering CPR to Lampinski, but he was soon relieved by someone who said he was a paramedic. Approximately five to ten minutes after Lampinski had collapsed, an ambulance arrived on the scene. Later that evening Gaulin spoke with Bergeron, who said that he was upset because, according to Griffin, the board was not informed for thirty minutes after plaintiff and Bendl had been informed that Lampinski had collapsed. Bergeron also criticized plaintiff, as a doctor, for not assisting Lampinski.

On the morning of June 24, Gaulin spoke with McNulty. McNulty testified that at that time Gaulin asked him if plaintiff had refused to aid Lampinski. McNulty

said he told Gaulin that that impression was not correct, that it would be a big mistake to print that plaintiff had refused to aid Lampinski. McNulty then relayed to Gaulin the message he had given to Smith. Gaulin testified that, after unsuccessfully trying to contact plaintiff several times, he reached McNulty. Gaulin remembered McNulty's telling him that the message relayed to plaintiff was that Lampinski had collapsed, he was being treated, an ambulance was called, and the situation was well in hand. Gaulin said that he did not remember the warnings against publishing anything implying that plaintiff refused to aid Lampinski.

On June 24, 1980, the day after Lampinski's collapse, the Times published an article by reporter Gaulin about the incidents at MacColl Field the night before. The fourth edition of the Times included the information that Bergeron, a friend and supporter of Lampinski, was critical of plaintiff, a surgeon, for his failure to respond with aid to Lampinski's collapse.

Lampinski's son, John, testified that on the evening of June 24 he received several phone calls from friends and relatives. They expressed their outrage because of the June 24, fourth-edition article. John Lampinski testified that he was outraged and upset at plaintiff after reading the article. The next day, June 25, after speaking with several people who had witnessed the incident or attended the board meeting and after hearing several different versions of the events surrounding Lampinski's collapse, John Lampinski and one of his brothers went to speak with Gaulin to express their displeasure about plaintiff's apparent lack of response to his father's collapse. During this meeting Gaulin did not reveal to the

Lampinski sons that he had been an eye-witness to the collapse, that CPR had been administered to Lampinski within one minute of his collapse, and that only five to ten minutes had elapsed between the time of Lampinski's collapse and the arrival of the ambulance.

On June 25, 1980, another article, written by Gaulin, entitled "Lampinski sons angry at YMCA board," was published. It related again that Lampinski died of a heart attack during a protest against the YMCA board of directors. The article further related that Lampinski's son, John, said that he was upset with the board for ordering Lampinski to leave the board meeting. The article then stated:

> "John [Lampinski] also said the family is also angry because they feel Lampinski should have been given early attention by either a doctor or a paramedic at the board meeting.
>
> Dr. Paul J. Healey is Y president and was at the meeting when Lampinski collapsed."

John testified that the June 25 article accurately stated his views that he expressed during his meeting with Gaulin.

The first issue defendant raises on appeal is its claim that the trial justice erred in the instruction to the jury regarding plaintiff's burden of proof. We have said that in a defamation action the plaintiff must prove " '(a) a false and defamatory statement concerning another; (b) an unprivileged publication to a third party; (c) fault amounting at least to negligence on the part of the publisher'; and (d) damages, unless the statement is actionable irrespective of special harm." *Lyons v. Rhode Island*

Public Employees Council 94, 516 A.2d 1339, 1342 (R.I.1986) (quoting Restatement (Second) *Torts* § 558 (1977)).[1]

With regard to the first element of the standard, we have stated, "[A]ny words, if false and malicious, imputing conduct which injuriously affects a man's reputation, or which tends to degrade him in society or bring him into public hatred and contempt, are in their nature defamatory * * *." *Elias v. Youngken*, 493 A.2d 158, 161 (R.I.1985) (quoting *Reid v. Providence Journal Co.*, 20 R.I. 120, 124-25, 37 A. 637, 638 (1897)). We have also adopted the doctrine that a statement in the form of an opinion may be defamatory and therefore actionable if and only if "it implies the allegation of undisclosed defamatory facts as the basis for the opinion." *Belliveau v. Rerick*, 504 A.2d 1360, 1362 (R.I.1986) (quoting 3 Restatement (Second) *Torts* § 566 at 170). *See also Healey v. New England Newspapers, Inc.*, 520 A.2d 147 (R.I.1987).

In her instructions to the jury the trial justice explained this doctrine by stating that the jury "should consider whether the reporter, Edward Gaulin, failed to disclose to the reader facts available to him." The trial justice further instructed:

> "If you find that the reporter had available to him facts that he failed to reveal, and the disclosure of these facts would have ensured that a reasonable person could not have construed the existing facts in

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[1] In *Healey v. New England Newspapers, Inc.*, 520 A.2d 147, 149 n.1 (R.I.1987), we noted the dual definitions of "defamatory." Here, as in *Healey*, the concept of falsity is incorporated into our definition of a defamatory statement. *See Lyons v. Rhode Island Public Employees Council 94*, 516 A.2d 1339, 1342-43 n.4 (R.I.1986).

> a manner which reflected negatively on Dr. Healey, you may find that the defendant defamed the plaintiff."

The trial justice also instructed the jury that truth is a complete defense in an action for libel no matter how much harm is done by the statements. She emphasized that "[t]he plaintiff has the burden of establishing that the publications complained of are false. * * * So long as the gist or the sting of the publication is true, the publication is not false." Finally the trial justice explained that plaintiff must "prove that which he asserts or claims by a fair preponderance of the evidence." After a careful review of the instructions given to the jury regarding the law of defamation and the burden of proof, we find no error with the instructions.

Next defendant cites *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 94 S.Ct. 2997, 41 L.Ed.2d 789 (1974), and *Major v. Drapeau*, 507 A.2d 938 (R.I.1986), to support its argument that plaintiff is a "limited purpose public figure" for the purposes of this action. In *Major v. Drapeau*, this court adopted the standard set forth in *Gertz*, where the Supreme Court held that there are two bases for designating an individual a public figure for purposes of defamation actions:

> "In some instances an individual may achieve such pervasive fame or notoriety that he becomes a public figure for all purposes and in all contexts. More commonly, an individual voluntarily injects himself or is drawn into a particular public controversy and thereby becomes a public figure for a limited range of issues." 418 U.S. at 351, 94 S.Ct. at 3013, 41 L.Ed.2d at 812.

The Court then further defined the "limited purpose public figure" designation:

> "We would not lightly assume that a citizen's participation in community and professional affairs rendered him a public figure for all purposes. * * * It is preferable to reduce the public-figure question to a more meaningful context by looking to the nature and extent of an individual's participation in the particular controversy giving rise to the defamation." 418 U.S. at 352, 94 S.Ct. at 3013, 41 L.Ed.2d at 812.

Considering the nature and extent of plaintiff's participation in the evens surrounding Lampinski's collapse, we agree with the trial justice that plaintiff is a private figure for the purposes of this defamation action. The plaintiff was the president of the board of directors of the YMCA when the article in question was published. Further, the controversy over the YMCA personnel decision to terminate two long-term employees attracted publicity during the summer of 1980. However, the controversy giving rise to the defamation did not involve plaintiff's role as president of the board of directors or the public controversy over the terminations. The defamatory statements involved plaintiff's role as a physician and his implied inaction in response to the collapse of a person in need. The article's reference to plaintiff's profession is a reference to his private life, not his public life. Although Lampinski's collapse and subsequent death may have been of public interest, in light of both plaintiff's role as president of the board of directors and Lampinski's role in the controversy over the YMCA employee terminations, the "newsworthy" nature of the incident does not make plaintiff a public figure. *See Wolston v. Reader's Digest Ass'n. Inc.*, 443 U.S. 157, 167, 99 S.Ct. 2701, 2707, 61

L.Ed.2d 450, 460 (1979) ("[a] private individual is not automatically transformed into a public figure just by becoming involved in or associated with a matter that attracts public attention").

The defendant also argues that the trial justice should not have waited until the conclusion of defendant's case to determine whether plaintiff was a public or a private figure. In *Healey I*, 520 A.2d at 153 n.2, we stated in a footnote, "[T]he trial court must determine, prior to sending this case to the jury, the status of plaintiff as a public or a private figure * * *." The trial justice has complied with this directive. We find no error.

The defendant next challenges the admission into evidence of statements made by third parties not present at trial concerning the articles in question. In *Gordon v. St. Joseph's Hospital*, 496 A.2d 132 (R.I.1985), also a defamation case, the trial justice allowed witnesses to testify about what other people had said about the plaintiffs, people who had read the allegedly defamatory statement but who were not present at trial. This court held that "testimony of plaintiffs and their witnesses about what other people were saying concerning their understanding of the libelous statement is admissible to establish the extent to which the statement was read in the community and the effect that it produced." *Id.* at 136 (citing *Chagnon v. Union-Leader Corp.*, 103 N.H. 426, 436, 174 A.2d 825, 832 (1961)). Here these statements are not offered to prove the truth of the matter asserted but are relevant to establish the effect of the publication on those who received it. This exception, as set forth in *Gordon*, is now reflected in Rule 803(3) of the Rhode Island Rules of Evidence. The trial

justice properly overruled defendant's hearsay objections.

In reviewing the denial of defendant's motion for a directed verdict, this court must exercise the same function as that of the trial justice. We must view the evidence in the light most favorable to the nonmoving party, without weighing the evidence or assessing the witnesses' credibility, and draw from the evidence only those inferences that support the nonmoving party's claim. If reasonable minds could differ regarding issues of fact, the motion must be denied, leaving the decision for the jury. *Healey*, 520 A.2d at 149; *Major v. Drapeau*, 507 A.2d at 940; *Haxton's of Riverside, Inc. v. Windmill Realty, Inc.*, 488 A.2d 723, 725 (R.I.1985).

The defendant argues that plaintiff did not establish that the allegedly defamatory statements were false and malicious and that the defendant was negligent in the republication of the statements. In *Healey I*, 520 A.2d at 152, we found that readers of the John Lampinski statement in the June 25 article could reasonably have found that it implies several undisclosed defamatory facts. The language could be understood to imply that Lampinski collapsed at the board meeting, that plaintiff was requested to assist Lampinski and that plaintiff refused this request, and that there was ample time for plaintiff to render aid. We also stated that when determining the meaning of an allegedly defamatory communication, one must examine all parts of the communication that are heard or read with it. *Id.* (citing 3 Restatement (Second) *Torts* § 563, comment d at 163-64).

In the article in question Gaulin does explain that Lampinski collapsed 200 yards from the board meeting, that Lampinski received CPR, and that several people at the board meeting disputed the negative implications created by the John Lampinski statement. However, Gaulin was at the scene when Lampinski collapsed. He knew Lampinski was immediately given CPR. In fact, Gaulin first assisted in the CPR and then was relieved by a person claiming to be a paramedic. Gaulin also knew that an ambulance arrived at the scene within five to ten minutes of Lampinski's collapse.

Looking at the evidence in the light most favorable to plaintiff, one could reasonably conclude that by including the John Lampinski opinion in the article, defendant created the implication that plaintiff was asked and refused to help Lampinski and that there was enough time for plaintiff to render aid to Lampinski. The evidence could support a finding that defendant knew these implications were false or that it acted in reckless disregard of whether these implications were true or false by failing to disclose the firsthand information that would have dispelled the defamatory implications in the article as it was published. The "defamation" at issue here really consists of what was left unprinted as well as what was actually printed. We conclude, therefore, that the trial justice correctly denied the motion for a directed verdict.

The defendant argues that plaintiff failed to meet his burden of proving actual damages. This court has held that an award of compensatory damages may be based upon the mental anguish and humiliation experienced as a result of a defamatory statement. *Bosler v. Sugarman*, 440 A.2d 129, 132 (R.I.1982). That standard applies to this

case. Drawing all inferences in favor of plaintiff, we conclude that there is ample evidence that plaintiff suffered mental anguish and humiliation as a result of the impressions relayed to plaintiff by family, friends, and professional associates after they read the article in question.

The defendant argues that plaintiff failed to establish his entitlement to punitive damages. Because plaintiff has been determined to be a "private figure," he has the burden of proving by clear and convincing evidence that defendant acted with actual malice in publishing a story that contained the implication of undisclosed defamatory facts. Actual malice is either knowledge that a statement is false or reckless disregard for the truth or falsity of the statement. *Major v. Drapeau*, 507 A.2d at 940-41 (citing *Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc.*, 472 U.S. 749, 755, 105 S.Ct. 2939, 2943, 86 L.Ed.2d 593, 600 (1985), and *New York Times Co. v. Sullivan*, 376 U.S. 254, 279-80, 84 S.Ct. 710, 726, 11 L.Ed.2d 686, 706 (1964)). As we have stated, the record reveals that information was available to Gaulin prior to publishing the June 25 article that he could have included in the article to clarify any confusion about what plaintiff was asked or told and how he responded; that Gaulin witnessed Lampinski's collapse and remained on the scene and therefore had personal knowledge that plaintiff's conduct was not reprehensible in any way; and that John Lampinski was not at the scene when his father collapsed. The publication of John Lampinski's statement gave rise to an inference that plaintiff refused to help a person in need of medical attention. The

evidence could support a finding by the jury that defendant either knew this implication was false or recklessly disregarded determining whether it was true or false.

Next defendant complains that the trial justice did not instruct the jury that defendant's conduct must amount to "criminality" in order for plaintiff to recover punitive damages. We would point out that this court has adopted the "actual malice" standard set forth by the Supreme Court in *New York Times Co. v. Sullivan*, 376 U.S. 254, 84 S.Ct. 710, 11 L.Ed.2d 686 (1964), for an award of punitive damages in a defamation action. In *DeCarvalho v. daSilva*, 414 A.2d 806, 812-13 (R.I.1980), we stated that

> "it appears that the present state of the law, as enunciated by the Supreme Court of the United States, imposes upon states two major bodies of restrictions in respect to allowing recovery for defamatory publications. * * * In the event that exemplary damages are to be awarded, then the 'actual malice' element must be shown by clear and convincing evidence."

As we have said, actual malice is actual knowledge of the falsehood or reckless disregard for the truth or falsity of the allegedly defamatory material. Similarly, in *Gordon v. St. Joseph's Hospital*, 496 A.2d at 137, we stated that in a defamation action, the evidence must support a finding that "defendant published the statement with such wilfulness, recklessness, or wickedness as to support [a punitive damages] award."[2] The evidence in this record

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[2] In *Gordon v. St. Joseph's Hospital*, 496 A.2d 132, 137 (R.I.1985), we quoted language from *Hagan v. Providence and Worcestor R. R. Co.*, 3 R.I. 88, 91 (1854), which was not a libel case, that in order to warrant a punitive damages award there

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would certainly warrant a jury's concluding that plaintiff had established actual malice by clear and convincing evidence.

We also reject the argument that the verdict was so inconsistent as to indicate that the jury did not understand the trial justice's instruction or the application of the law to the facts. The plaintiff had alleged that each of the articles printed on the twenty-fourth and twenty-fifth of June were defamatory. The jury found only the last, the June 25 article, to be defamatory. The plaintiff argues that there are underlying factual distinctions between the two articles that would warrant this jury determination. We agree.

The June 25 article contains a republication of John Lampinski's opinions regarding his father's treatment at the board meeting and upon his collapse. The June 24 article does not. Further, the June 25 article was printed after the reporter had an opportunity to speak with several people who said that the plaintiff had not been asked to assist Lampinski and had been told that everything

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must be "evidence of such wilfulness, recklessness or wickedness, on the part of the party at fault, as amount[s] to criminality, which for the good of society and warning to the individual, ought to be punished." When we applied this standard to the defamation action at issue in *Gordon*, we did not apply the criminality standard. This elimination is consistent with our case law on defamation and the *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 94 S.Ct. 2997, 41 L.Ed.2d 789 (1974) directive to apply the "actual malice" standard to claims by private individuals alleging defamation and claiming punitive damages.

was in hand. The June 24 article was printed prior to the reporter's receiving this information. Finally, John Lampinski received all his information about his father's collapse from other people who were either at MacColl Field or in the board meeting. John Lampinski's opinion, republished in the June 25 article, implies that Dr. Healey could have, but refused to, aid Gerald Lampinski. Gaulin was a witness to the collapse. He immediately rendered aid to Lampinski and knew that an ambulance arrived within five to ten minutes of Lampinski's collapse. Gaulin did not tell John Lampinski that he witnessed the entire event. We believe a jury could find that the publication of John Lampinski's opinion in the second article implied undisclosed defamatory facts known to the defendant to be false or was in reckless disregard for their truth or falsity. The verdict, in our opinion, showed no inconsistency but rather showed that the jury perceived the different legal effect of the articles resulting from the different quantum of information Gaulin possessed as the successive publications and republications occurred.

For these reasons the defendant's appeal is denied and dismissed, the judgment appealed from is affirmed, and the papers of the case are remanded to the Superior Court.

Supreme Court
No. 87-489-Appeal.

Paul J. M. Healey, M.D. :
:
v. :
:
New England Newspapers, Inc. :
d/b/a The Pawtucket Evening :
Times. :

ORDER

This is a motion for reconsideration.

On May 25, 1989, this court denied a motion to stay the effect of our March 3, 1989 Opinion herein, and defendant, having filed a petition for writ of certiorari with the United States Supreme Court to obtain review of the rulings contained in that opinion, asks that we reconsider our refusal to grant a stay, or, in the alternative, that we explain the basis for such refusal.

Our reasons for denying the stay are apparent from a reading of the opinion. The issues decided in this case were essentially factual. Consequently, the likelihood that petitioner would succeed in persuading the United States Supreme Court to grant certiorari is extremely remote.

Although this Court applied the liability standards enumerated by the United States Supreme Court in *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 94 S.Ct. 2997, 41 L.Ed.2d 789 (1974), in respect to defamation actions brought by private persons, we further noted that the reporter in this case went beyond the conduct necessary to create such liability because he published matter in the guise of an opinion based upon fact he knew to be untrue, thus

supplying the element of actual malice necessary to support an award of punitive damages.

Accordingly, the motion for reconsideration is denied.

Entered as an Order of this Court this 12th day of June 1989.

By Order,

/s/ Matthew J. Smith
Clerk